

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT – LOS ANGELES

In the Matter of	)	Case Nos.: <b>12-O-18230-RAH</b>
	)	(13-O-10449; 13-O-11483)
<b>JOSEPH K. BORGES, JR.,</b>	)	
	)	<b>DECISION AND ORDER OF</b>
<b>Member No. 37812,</b>	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
<u>A Member of the State Bar.</u>	)	

In this matter, respondent Joseph K. Borges, Jr., was charged with four counts of misconduct stemming from three client matters. Respondent failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel of the State Bar of California (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC), and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to practice law in this state on January 5, 1966, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On April 23, 2013, the State Bar properly filed and served an NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The NDC was not returned to the State Bar by the U.S. Postal Service as undeliverable or for any other reason.

In addition, reasonable diligence was also used to notify respondent of this proceeding. The State Bar made several attempts to contact respondent without success. Prior to filing the NDC, a State Bar investigator went to respondent's membership records address and found it to be abandoned. Also prior to filing the NDC, a State Bar investigator called a telephone number for respondent identified through a Lexis Smartlinx report. Upon calling the number, the investigator spoke to Lydia Montano (Montano).<sup>3</sup> Montano identified herself as respondent's former legal assistant and stated that respondent was living in a rest home. After filing the NDC, a deputy trial counsel for the State Bar called and spoke with Montano. Montano advised that respondent was living in an assisted living facility, but would not reveal respondent's current address. A State Bar investigator then performed an internet and Lexis/Nexis search for

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<sup>3</sup> The deputy trial counsel's declaration refers to Montano as "Lydia Montoya," while the State Bar investigator's declaration identified her as "Lydia Montano." While the correct spelling is unclear, the court will refer to this individual as "Montano," as that name appears on the return receipt of the NDC.

respondent. The Lexis/Nexis search revealed a new possible address. A letter was sent to that address, but the State Bar did not receive a response.

Respondent failed to file a response to the NDC. On July 23, 2013, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on August 8, 2013. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On March 17, 2014, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) it has had no contact with respondent since the default was entered; (2) respondent has no other disciplinary matters pending; (3) respondent has no prior record of discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on April 16, 2014.

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set

forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

**Case No. 12-O-18230 – The Abasta Matter**

Count One – respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(1) (failure to release file) by failing to release his client’s file upon request.

**Case No. 13-O-10449 – The Preciado Matter**

Count Two – respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(1) (failure to release file) by failing to release his client’s file upon request.

**Case No. 13-O-11483 – The Greenlee Matter**

Count Three – respondent willfully violated Rules of Professional Conduct, rule 3-700(D)(1) (failure to release file) by failing to release his client’s file upon request.

**Case Nos. 12-O-18230; 13-O-10449; 13-O-11483 – The Membership Address Matter**

Count Four – respondent willfully violated Business and Professions Code section 6068, subdivision (j) (failure to update membership address), by failing to maintain on the official membership records of the State Bar a current office address and telephone number or, if no office is maintained, the address to be used for State Bar purposes.

**Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent’s disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar properly served him with the NDC and made various efforts to locate respondent, including going to respondent’s membership records address, conducting

internet and Lexis/Nexis searches, speaking with a person who identified herself as respondent's former legal assistant, and sending a letter to respondent at a possible alternative address;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule, or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

## **RECOMMENDATIONS**

### **Disbarment**

The court recommends that respondent Joseph K. Borges, Jr., be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

### **California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

### **Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

## **ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Joseph K. Borges, Jr., State Bar number 37812, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: June \_\_\_\_\_, 2014

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RICHARD A. HONN  
Judge of the State Bar Court